

human rights and democracy commitments by the Lukashenka regime and loosen its unhealthy monopoly on political and economic power. I hope our efforts here today will facilitate independent Belarus' integration into democratic Europe in which the principles of democracy, human rights and the rule of law are respected. The beleaguered Belarusian people have suffered so much over the course of the last century and deserve better than to live under a regime frighteningly reminiscent of the Soviet Union. The struggle of the people of Belarus for dignity and freedom deserves our unyielding and consistent support.

This legislation is important and timely because Belarus, which now borders on NATO and the EU, continues to have the worst human rights and democracy record of any European state—bar none.

HONORING LLOYD C. HILLARD, JR.

HON. RON LEWIS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. LEWIS of Kentucky. Mr. Speaker, I rise today to pay public tribute to Lloyd C. Hillard, Jr., an exemplary community leader, businessman and citizen from my congressional district. Lloyd received this year's Hardin County Distinguished Citizen Award from the Boy Scouts of America during ceremonies earlier this month.

A native of Kentucky, Lloyd grew up on a farm in Pine Grove and earned college degrees from the University of Kentucky and the University of Wisconsin. Lloyd has distinguished himself as a business leader, serving as President and CEO of First Citizens Bank, and a good neighbor, through his active involvement in many community and charitable organizations.

Though never a scout himself, Lloyd's life-long example of honesty and devotion to his family and community parallel ideals championed by the Boy Scouts. He first became involved with the Scouts as a young adult, running a school recruitment program.

Lloyd has been an especially active member of our community, having served as past president and director of the Bluegrass Council Boy Scouts of America, past chairman of the North Central Kentucky Education Foundation, and former treasurer and director of the Cavalry Armor Foundation.

Lloyd was also past chairman of the Hardin County Community Foundation, Helping Hand of the Heartland, and the Hardin County Fund for the Arts. He remains an active member of the local United Way and the Elizabethtown Rotary Club.

It is my great privilege to recognize Lloyd C. Hillard, Jr. today, before the entire U.S. House of Representatives, for his example of leadership and service. His unique achievements make him an outstanding American worthy of our collective honor and respect.

RECOGNIZING THE SERVICE OF BOB POYDASHEFF

HON. LYNN A. WESTMORELAND

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. WESTMORELAND. Mr. Speaker, I rise today to recognize the service of a veteran and mayor in my district, Bob Poydasheff, the former Mayor of Columbus, Georgia.

Bob Poydasheff knows what service to our Nation means. He served our Nation in the Army during a combat tour in Vietnam, along with service as counsel for the Secretary of the Army and other officers. He retired with the rank of colonel and many awards, including the Bronze Star.

Bob Poydasheff began serving in the community in the city of Columbus through a variety of non-profit organizations, including the Columbus Symphony, and he worked to help ensure the right direction for our young people through his involvement with the Boy Scouts of America. He has served as the mayor since 2003 and served on the Columbus Council for 6 years prior to his election as mayor.

Bob is also committed to his family, raising two children with his wife Stacy, and enjoying his time with his five grandchildren.

Mr. Speaker, we are all grateful for the service Bob Poydasheff has rendered to our Nation through his time in the military and to our state through his service as mayor of Columbus. We wish him well in all of his future endeavors.

RECOGNIZING WILLIAM "BILL" BRADFORD

HON. RALPH M. HALL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. HALL. Mr. Speaker, I rise to recognize Bill Bradford of Sulphur Springs, TX, whose distinguished work in radio recently earned him the dedication of a city street in Sulphur Springs in his honor. In recognition of his many years as a radio owner, operator, and pioneer, Radio Road was recently renamed Bill Bradford Road.

Outgoing Sulphur Springs Mayor Clay Walker began pursuing the renaming of Radio Road at the suggestion of long-time Sulphur Springs resident, Jeff Massey. The idea for this change was well-received by the City Manager and members of the City Council who unanimously voted for the change. Indeed, the idea was so popular that many community leaders expressed surprise that the idea had not been thought of before.

As incoming Sulphur Springs Mayor Freddie Taylor's first official act, a framed city resolution changing the name from Radio Road to Bill Bradford Road was presented to Bill along with the first street sign to bear the name "Bill Bradford Road." Sixty days later street signs were erected on August 2nd and 3rd making the name change effective.

Bill began his radio career as a radio operator in the military during World War II and afterward became owner of radio station KSST in Sulphur Springs. In 1992 he was named Texas Association of Broadcasters'

"Pioneer of the Year," and he was installed into the Texas Radio Hall of Fame's "Hall of Honor" in 2005.

Bill has contributed his time and talent to the radio industry and to the residents of Sulphur Springs. Having lived in Sulphur Springs for nearly 60 years, Bill has been a pivotal and influential voice in chronicling the city's growth. Today I am proud to recognize a beloved and legendary citizen of Sulphur Springs, TX—Bill Bradford.

NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2006

SPEECH OF

HON. JOHN CONYERS, JR.

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 5, 2006

Mr. CONYERS. Madam Speaker, the following letter from American University, Washington College of Law Professor Andrew F. Popper outlines the problems and concerns with this legislation.

AMERICAN UNIVERSITY,
WASHINGTON COLLEGE OF LAW,
Washington, DC.

Hon. JOHN CONYERS,
Ranking Member, House Committee on the Judiciary, Washington, DC.

DEAR CONGRESSMAN CONYERS, I recently learned that the House of Representative is considering H.R. 1176, a bill that would immunize major non-profits in the university sport/entertainment field and all non-profits involved in children's activities generally. I have testified against this bill in its earlier form and have seen the current version. I very much hope this current version will be rejected. It is an awful bill, as discussed below.

The specific question posed to me was whether this bill would carve out an exception for state tort common law claims against organizations and officials who engaged in behaviors that devastated children, athletes, and others who place their trust in the non-profits that are the subject of this bill. There is reason to think actions will not be possible if this bill becomes law.

State tort law holds out the promise of a real incentive to exercise due care in precisely the kinds of programs this bill describes in its opening sections. The tragedy is, this bill would eliminate those state common law tort claims required to produce those incentives.

The argument has been made that while this bill provides explicitly comprehensive immunity for non-profit organizations in the sports/athletics and related fields, somehow it preserves the necessary state common law tort claims required to secure relief when organizations and their employees and volunteers have failed to exercise that requisite level of care required and a child or young adult has been injured as a result. If the legislation stated directly that it excluded from its unconscionable sweep of liability all State common law tort claims, that argument would have some validity. In fact, the bill does just the opposite, listing precise fields where the immunity would be inapplicable—and in that list, state common law tort claims for negligence is nowhere to be found.

Preservation of state common law tort claims for who those who have been harmed, for children, families, athletes and others swept into this bill, could occur either by direct exclusion from the legislation such as

that which is set out in 4(d) of the bill or by a preemption analysis in which a court concludes that the overall meaning of the federal law and its plain text do not preclude state common law tort claims. That is unlikely for two reasons. First, the plain meaning if the bill (congressional intention) is the elimination of liability, and second, the list of those areas that are "preserved" or carved out does not include state common law tort claims.

On the question of preemption, listed at the end of this letter are citations to three fairly recent cases in which federal courts have struggled with the question of whether a federal bill has a preemptive effect on state tort claims. I inserted footnote 14 from the *Welding Fume Products Liability* case directly below to give you an idea of the complexity of this field. The short of it is, as Richard Ausness said in note 14: "[T]he Court's preemption jurisprudence appears to be bereft of any coherent theory or methodology" and "is in a terrible state. . . ." Therefore, one would not want to leave to subsequent judicial interpretation whether state common law tort claims for failure to exercise due care in hiring coaches, investigating backgrounds, or overseeing inappropriate activity would be actionable.

If it is the intention of the drafters of this legislation to exempt State common law tort claims from liability, they must say so, or the obvious effect of the bill—what will be seen as the clear intent of congress—will dominate.

H.R. 1176 has only one purpose: limitation of liability. It is hard to see any other purpose. As the case law makes clear, the dominant analytical factor in exclusion (carve-out) and preemption cases is congressional intent. The more elaborate interpretations, such as those in the cases below, are required when the purpose of the legislation is regulation of a field and the open question is the extent to which that regulation and a state law can co-exist. Sadly, will not be a question if this bill passes and becomes law.

After reading the bill, I see no language that exempts state common law tort claims. To the contrary, the specific areas exempted (e.g. labor law, antitrust law, statutory claims, etc.) suggest that Congress intends to exempt very specific areas only. Given that list in 4(d), unless the bill were amended to include an exemption for all state common law tort claims, the bill will be seen as a bar to cases involving negligent hiring, failure to assess background, negligent oversight of individuals who may well do great harm to children, to athletes, to those most in need of protection.

A plain reading of Section 4(d) and Section 5 suggests that those claims would be barred—and that is really quite horrendous. Cutting off liability, arbitrarily, undermines the incentives for better products and services. From the perspective of children who might be victimized by adults, treated in ways that are patently destructive from an emotional or psychological vantage point, what possible reason could there be to pass this bill?

During the earlier debates regarding the Volunteer Immunity ACT, supporters contended that while the legislation liberated coaches and volunteers from the risk of liability, even when they were negligent, it left the organizations as viable defendants in the event a plaintiff could fashion a respondent superior theory or a general vicarious liability claim under State law. H.R. 1176 would destroy that protection.

Although the three cases listed below hold out hope that a State common law tort claim might survive, H.R. 1176 is not a bill that regulates a field. Therefore, it would not give rise to the question of whether the

federal regulation can co-exist with State law, or whether state law creates obligation "in addition to and different from" federal requirements.

This is exactly the kind of tort reform that has been proposed for the last 25 years: a limitation on liability, blocking those who most need protection from access to the civil justice system. It is clear to see why large nonprofits want to limit liability. It is very hard to see why Congress would give in to that demand when the consequence would be to eviscerate an important set of incentives that protect those likely to be victimized.

Tort reform has always been an unfair fight. Think about the alignment of forces. On the side of those seeking to limit liability is the entire GNP. All of U.S. manufacturing, all of retailing, the health care industry, the pharmaceuticals, the insurance companies (who have as yet produced a coherent reason why this protection is badly needed based on anything resembling a juried study, comprehensive payout or case list, or other credible source), and, in this bill, all of U.S. higher education—every college and university, every athletic program, indeed, every non-profit involved in orchestrating sports and entertainment for tens of millions of children and young adults, and finally, much of the press who have abandoned consumers on this issue, with the hope of never having to pay punitive damages when they defame into reputational oblivion a private citizen.

On the other side, opposing these limits on accountability, are the defenders of the tort system—under-funded and often fragmented consumer groups, a few victims rights groups, some of whom have been mocked as shameless seekers of undeserved damage awards and, of course, trial lawyers. Trial lawyers—the architects of the consumer rights movement, the advocates for you and me when we are injured, the lawyers who represent the consumer perspective—who have been horribly vilified by a decades long comprehensive campaign to undermine their credibility, and in the shadow of this outrageous legislation, student groups (who have a voice, presumably, but are as yet unheard).

This is hardly a fair fight.

And then there is the term "tort reform." Laws that provide the protection for consumers, no incentive for greater safety, and limit the rights of those who lack power are hardly the stuff of reform.

And the data—or lack thereof—regarding the current civil justice system. From the CRS report forward, no credible juried study documents a crisis in the tort or insurance system or in the non-profit world that could conceivably justify legislation that limits arbitrarily consumer rights, as docs H.R. 1172.

This is tort reform as I have come to understand it—a series of bills that have but one meaning: reducing accountability and giving consumers nothing in exchange. It is not that it is incomprehensible. In fact, the reasoning is all too understandable. Who would not like to be excused of responsibility after they engaged in misconduct? The fact that the reasoning underlying this bill is understandable, however, does not mean that it is right, proper, just and fair. It is none of those things.

Let me know if you are interested in discussing this further.

Sincerely,

ANDREW F. POPPER,
Professor of Law.

TRIBUTE TO CONGRESSMAN CHRIS CHOCOLA

HON. STEVE BUYER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. BUYER. Mr. Speaker, my colleague CHRIS CHOCOLA of Indiana will be leaving Congress at the end of this session. I was impressed by the dedicated service offered during his tenure in the House of Representatives. His background as a lawyer and successful businessman was instrumental as a constant champion of fiscal restraint by the Federal Government. His extensive experience of managing a large public corporation proved invaluable to his vision of how the Federal Government should operate. It inspired his advocacy that government should be run like a business, efficient and effective, always with the customer and our fellow citizens.

As a member of both the Ways and Means and Budget Committees, he introduced legislation to streamline the budget process with the hope of reining in excessive and unfocused spending. CHRIS sought a reformation of the tax code so that hard working Americans could keep more of their paycheck. He introduced legislation so that families could continue to make tax free withdrawals from an education savings plan, as well as legislation to allow individuals to make tax free deductions of medical expenses without a gross income limitation. His boundless leadership and bold initiatives will always be looked upon as an asset to a grateful nation.

As a member of the Transportation and Infrastructure Committee, he secured \$12 million in Federal funding needed to make historic improvements to U.S. 31, a roadway connecting South Bend to Indianapolis. In addition, his work on the committee also helped to complete the Hoosier Heartland Corridor, a transportation project that after over a decade is in its final stage of construction.

CHRIS CHOCOLA's service to this Nation and to Indiana's Second Congressional District will leave an indelible mark for years to come.

PAYING TRIBUTE TO GEORGE ANN RICE

HON. JON C. PORTER

OF NEVADA

IN THE HOUSE OF REPRESENTATIVES

Friday, December 8, 2006

Mr. PORTER. Mr. Speaker, I rise today to honor my dear friend, Dr. George Ann Rice, for her outstanding service and continued contributions to our society.

Dr. Rice has been an invaluable asset to the Las Vegas community throughout the years. Throughout her many years of service, she has committed herself to improving our schools as the Associate Superintendent of the Clark County School District. Her responsibilities included recruiting and selecting licensed teachers, administrators and support staff as well as securing changes in Nevada Law and Nevada Administrative Codes related to employment and licensure issues. Dr. Rice served on the Clark County School District Investment Committee for 15 years and as Executive Board Director to the Silver State